United Nations A/ES-10/PV.23

General Assembly

Official Records

Emergency Special Session

23rd meeting

Monday, 8 December 2003, 10 a.m.

New York

President: The Hon. Julian R. Hunte ..... (Saint Lucia)

The meeting was called to order at 10.10 a.m.

The President: I declare the tenth emergency special session of the General Assembly on illegal Israeli actions in occupied East Jerusalem and the rest of the occupied Palestinian territory resumed, pursuant to General Assembly resolution ES-10/13 of 21 October 2003, whereby the Assembly decided to adjourn the tenth emergency special session temporarily and to authorize the current President of the General Assembly to resume its meeting upon request from Member States.

In this connection, I should like to draw the attention of delegations to document A/ES-10/249, which contains a letter, dated 1 December 2003, from the Charge d'affaires ad interim of the Permanent Mission of Kuwait to the United Nations, in which he requested, on behalf of the States Members of the League of Arab States, the resumption of the tenth emergency special session; and to document A/ES-10/251, which contains a letter, dated 3 December 2003, from the Permanent Representative of Malaysia to the United Nations in his capacity as Chairman of the Coordinating Bureau of the Non-Aligned Movement, and by which he conveys the support of the Non-Aligned Movement for the request for the resumption of the tenth emergency special session.

Scale of assessments for the apportionment of the expenses of the United Nations (A/ES-10/250)

The President: In keeping with the established practice, I should now like to invite the attention of the General Assembly to document A/ES-10/250, which contains a letter addressed to the President of the General Assembly by the Secretary-General, informing the Assembly that 12 Member States are in arrears in the payment of their financial contributions to the United Nations under the terms of Article 19 of the Charter. May I take it that the General Assembly duly takes note of this information?

It was so decided.

The President: In this context, I would like to clarify that, in accordance with Article 19 of the Charter and resolution 58/1 of 16 October 2003, two Member States will not be allowed to vote.

Agenda item 5 (*continued*)

Illegal Israeli actions in occupied East Jerusalem and the rest of the Occupied Palestinian Territory

Report of the Secretary-General (A/ES-10/248)

Draft resolution (A/ES-10/L.16)

Draft decision (A/ES-10/L.17)

The General Assembly will now resume its consideration of agenda item 5, entitled "Illegal Israeli actions in occupied East Jerusalem and the rest of the Occupied Palestinian Territory".

In connection with this item, the General Assembly has before it a draft resolution, issued as document

This record contains the text of speeches delivered in English and of the interpretation of speeches delivered in the other languages. Corrections should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room C-154A. Corrections will be issued after the end of the session in a consolidated corrigendum.

03-64427 (E)

A/ES-10/L.16, and draft decision, issued as document A/ES-10/L.17.

I now give the floor to the representative of Kuwait to introduce draft resolution A/ES-10/L.16 and draft decision A/ES-10/L.17.

Mr. Al-Otaibi (Kuwait) (*spoke in Arabic*): It gives me pleasure, as I speak before you in my capacity as Chairman of the Arab Group, to extend our thanks to you for your response to resume the tenth emergency special session of the General Assembly on the illegal Israeli actions in occupied East Jerusalem and the rest of the occupied Palestinian territory. We also thank the Secretary-General of the United Nations for his report submitted in pursuance of resolution ES-10/13 adopted by the tenth emergency special session on 21 October 2003, in which the Assembly requested Israel to stop and reverse the construction of the wall in the occupied Palestinian territories because it violates the Armistice Line of 1949 and breaches the norms of relevant international law. As was expected, the report of the Secretary-General reaffirmed in clear terms that Israel does not respect and disregards deliberately international resolutions, and ignores the serious implications of its policies and practices that contravene the Charter of the United Nations and the norms of international law and the Fourth Geneva Convention of 1949.

The Secretary-General concluded in his report that Israel has not complied with the General Assembly resolution that demanded that the construction of the wall in the occupied Palestinian territories be stopped and reversed. The report further indicated that the Israeli Government has continued to confiscate land in order to build the barrier with serious implications on the economic and humanitarian conditions of the Palestinian people. All reports of international observers have concluded that the construction of the wall would dissect the West Bank, isolate Palestinian territories and restrict the movement of Palestinian goods and citizens, in clear violation of the norms and provisions of the International Covenants on Human Rights.

The Arab position regarding the construction of this wall is clear and explicit and has been expressed on several occasions, both in the General Assembly and in the Security Council. This position emanates from our deep conviction that Israeli practices and policies in the occupied territories violate international law and United Nations resolutions and do not demonstrate in any meaningful way a genuine desire by Israel to reach a just, comprehensive and durable peace with regard to the Palestinian issue. Israeli measures and actions are trying to impose a fait accompli on the ground, including the confiscation of land, recurrent incursions into land under Palestinian Authority control, continued building of settlement posts and detention of civilians and closures. They do not lead to building confidence and they create unfavourable conditions for the continuation of negotiations. Persistence in these policies will undermine all prospects for peace and will create obstacles and difficulties to the implementation of international initiatives especially the road map, which was developed and sponsored by the Quartet and was supposed to lead to the establishment of an independent, viable Palestinian State.

We condemn those Israeli practices and policies, which have aggravated the suffering of the Palestinian people, and we call upon the international community to fulfil its obligations and compel Israel to respect international legality and cease forthwith pursuing those policies that will undoubtedly lead to further deterioration of the security situation and to increase instability in the region. The Israeli Government must realize that these measures and policies, which aim at perpetuating the occupation and seizing more land, will not achieve the security that it strives to impose, and that the only viable option aimed at achieving a comprehensive, lasting and just settlement must be based on United Nations resolutions, especially Security Council resolutions 242 (1967), 338 (1973), 1397 (2002) and the land-for-peace principle, as well as on fulfilling all obligations relating to the road map, as endorsed by Security Council resolution 1515 (2003).

I have the honour, on behalf of the sponsors of draft resolution A/ES-10/L.16, namely, Jordan, United Arab Emirates, Indonesia, Bahrain, Brunei Darussalam, Bangladesh, Tunisia, Algeria, the Comoros, the Libyan Arab Jamahiriya, South Africa, Djibouti, Senegal, the Sudan, Somalia, Oman, Qatar, Cuba, Kuwait, Lebanon, Malaysia, Egypt, Morocco, the Kingdom of Saudi Arabia, Mauritania, Namibia, Yemen and Palestine, and of draft decision A/ES-10/L.17, namely, Jordan, United Arab Emirates, Indonesia, Bahrain, Brunei Darussalam, Bangladesh, Tunisia, Algeria, the Comoros, South Africa, Djibouti, Senegal, the Sudan, Somalia, Oman, Qatar, Cuba, Kuwait, Lebanon, Malaysia, Egypt, Morocco, the Kingdom of Saudi Arabia, Mauritania, Namibia, Yemen and Palestine, to introduce the two drafts.

We are introducing these drafts in the wake of the issuance of the Secretary-General's report, which indicates that Israel has failed to comply with the General Assembly resolution to halt and reverse the construction of the barrier. The two drafts are being introduced also as a follow-up to General Assembly resolution ES-10/13, dated 21 October 2003, which was adopted at the resumed tenth emergency special session.

That resolution represents for us an extremely important step, showing in clear terms the legal implications of the construction of the wall in the occupied Palestinian territories, including Jerusalem. The draft resolution before you today reaffirms the applicability of the Fourth Geneva Convention and its Additional Protocol to the occupied Palestinian territories, including East Jerusalem. It reaffirms the need to end the conflict on the basis of the establishment of two States, Israel and Palestine, living in peace side by side according to the Armistice Line of 1949. It also underlines the fact that, with the passage of time, the conditions on the ground will become more difficult because of the construction of the wall, which can only have serious and dire consequences.

In conclusion, the draft resolution in its first operative paragraph decides, pursuant to Article 96 of the Charter of the United nations to call on the International Court of Justice, pursuant to article 65 of the Statute of the Court, to urgently render an advisory opinion on the following question: What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the occupied Palestinian territories, including in and around East Jerusalem — as described in the report of the Secretary-General — bearing in mind the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?

We hope that all Member States will support the draft resolution by voting in favour, which would reflect a vote in favour of respecting the rules and principles of international law.

Mr. Al-Kidwa (Palestine) (*spoke in Arabic*): In his report to the General Assembly, submitted pursuant to the request made by the tenth emergency special session in its resolution ES-10/13, the Secretary-General reached the conclusion that

> "Israel is not in compliance with the Assembly's demand that it 'stop and reverse the construction of the wall in the Occupied Palestinian Territory'" (*A/ES-10/248, summary*)

Moreover, resolution ES-10/13 stated that, upon receipt of the report, "further actions should be considered, if necessary, within the United Nations system".

All of this is very clear. Israel has not complied with the resolution and therefore further actions must be taken. As you are all aware, we believe that further possible action at this stage is to request an advisory opinion from the International Court of Justice about the legal consequences arising from the construction of the wall by Israel, the occupying Power, in disregard of the relevant provisions of international law, as well as relevant Security Council and General Assembly resolutions.

In the absence of any other specific practical measures to compel Israel to stop building the wall and to dismantle the existing parts we must, at a minimum, seek to affirm the legal aspects of this matter, such as the illegality of the wall and the necessity of non-recognition of the wall and its implications by States and by the United Nations system. We also hope that that will put additional pressure on Israel, the occupying Power, so that it will comply with and adhere to the provisions of international law and the will of the international community.

The draft resolution before the Assembly today addresses the previously mentioned report of the Secretary-General, and we hope that it will be adopted by an overwhelming majority. In our view, all law-abiding nations that believe in the importance of respecting the law and working within the United Nations system should support the draft resolution before us today. There is no credibility to the opposing argument, particularly in light of Israel's intransigent stance on the ongoing construction of the wall, in flagrant disregard of international opinion.

With regard to the expansionist conquest wall, its nature and its function, the accompanying confiscation of land, the creation of enclosed areas, and, finally, its humanitarian and socio-economic impact, we do not feel it is necessary to expand on the report of the Secretary-General (A/ES-10/248). That report presents the facts as they are on the ground and does so in greater detail than my delegation was able to do in our presentations in the General Assembly and the Security

Council. Now that the facts have been confirmed, we feel that it is our right, on behalf of the Palestinian people, to ask how this could possibly happen? How is it possible to allow the destruction of the livelihood of tens of thousands of people through the confiscation of their lands and the destruction of their farms? How is it possible to allow the confinement of thousands of people within walls from which they can enter and exit only through a gate? What is happening is the enslavement of the whole Palestinian people, who are being increasingly cantonized by the Israeli fascist colonial occupier. It is the shame of the century. It is the shame of the twenty-first century, which cries out for serious action to be taken to stop the construction of the wall.

Above and beyond our feelings and our deep wounds, I would like to highlight two matters that we think are quite clear in the Secretary-General's report.

First, the wall cannot be considered a security measure. That pretext was used before to justify the colonization of our land. Israeli settlers were encouraged to establish illegal settlements on our land in what constitutes an immense war crime. Today, the same excuse is being used to acquire our land by force and to commit yet another immense war crime. The issue was, and still is, the land, and the illegal expansionist designs of Israel, at the expense of the Palestinian people and their national existence.

In the 1948 war, immediately after the declaration of its creation, Israel seized and began incorporating more than half of the lands allocated by the United Nations to the Arab State in the Partition Plan on the pretext that it had been attacked by Arab countries. In the 1967 war, Israel occupied the remaining half of the land allocated to the Arab State — which represents less than one quarter of the Palestine of the Mandate — and for over 36 years it has refused to withdraw from that land. When the Palestinian leadership made the unprecedented, historic compromise of accepting the coexistence of the two States, with Palestine to be established only on the territories occupied since 1967, Israel continued to colonize our land and illegally transfer its citizens to it. In the period following the initiation of the Oslo peace process — including the period since the road map was launched — the occupying Power has doubled the number of its settlers. Now, Mr. Sharon and his Government want to forcibly acquire half of the territory occupied since 1967, while simultaneously claiming that they want peace and the implementation of the road map.

The Israeli Government is pursuing all these policies while it has not even resolved the issue of the ownership of land and properties in Israel itself. There are 5.5 million dunums of land personally owned by Palestinian refugees — and that represents claims based on private ownership alone. Those claims have been recognized and registered by the United Nations Conciliation Commission for Palestine, composed of the United States, France and Turkey. Five and a half million dunums represents more than 40 per cent of the territory of Israel, if we exclude the Negev desert.

Not only has Israel taken over that land instead of returning it to its rightful Palestinian owners, it continues to colonize the rest of the Palestinian land in the West Bank, including East Jerusalem, and the Gaza Strip, once again committing one of the biggest war crimes of its kind in modern history.

Secondly, the wall means an end to the two-State solution, and of course, the end of the road map, which seeks to achieve that goal. In that respect it totally violates Security Council resolution 1515 (2003). Mr. Sharon and his Government have worked to sabotage all attempts to stop the violence, halt the deterioration of the situation and return to the path of peace. They destroyed the Mitchell recommendations and they are now destroying the road map, starting with their reservations on the road map and now with the construction of the wall. It is not possible to claim willingness to implement the road map while building the wall at the same time. For us, any negotiations are meaningless without first stopping the construction of the wall. For us, it is either the wall or the road map. The entire international community, particularly the Quartet, should take that same position.

If Israel continues building the wall, it will be the end of the road map and the end of resolution 1515 (2003) and there must be a reaction to that, particularly by the Security Council. That reaction should take the form of a comprehensive resolution in which the form of the final settlement would be defined, while calling upon the parties to negotiate its details. The Non-Aligned Movement, in its last ministerial statement on Palestine, has already called for that solution. It also called for the United Nations to ensure that Israel's credentials to the General Assembly not be recognized as covering the Palestinian territory occupied since 1967, including East Jerusalem, as a first practical step in that regard.

I also wish to refer to the civil society initiatives from both the Palestinian and Israeli sides with regard to the form of the final settlement of the conflict, including the use of the Geneva Accord as a useful model upon which we can build. In that regard, we reiterate our general support for the Geneva Accord.

The political meaning of what we are saying should be clear: construction of the wall must be stopped, at any cost. If we fail to do so, Israel should have to bear the consequences and the international community should accelerate the imposition of a final settlement on both sides.

I would like to thank you, Mr. President, for your cooperation with the request to resume the tenth emergency special session. We believe that in the future this meeting will be viewed as one of historic importance. I would also like to express our thanks and appreciation to the Secretary-General, Mr. Kofi Annan, for his report. Although it does not present any analysis, the report contains an honest description of the facts as they are and as we all know them.

Israel, on the other hand, has expressed extreme indignation towards the report and has rejected it. Prior to that, Israel also expressed extreme indignation towards Security Council resolution 1515 (2003) and considered it non-binding. This is part of Israel's definitive pattern in dealing with the United Nations, its Members and its organs. During the current session of the General Assembly, Israel has attacked the following: members of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories; the Committee for the Exercise of the Inalienable Rights of the Palestinian People; the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967; the Special Rapporteur on the right to food; the United Nations Special Coordinator for the Middle East Peace Process and Personal Representative of the Secretary-General; the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA); and finally, the overwhelming majority of Member States. Today, I am certain we will hear yet another attack on the tenth emergency special session and the General Assembly itself. All these attacks represent the height of insolence, arrogance and sense of superiority, and they accuse others of being anti-Israel and sometimes even anti-Semitic. All this reflects the classic thinking of occupiers and colonizers and the arrogance of power. It represents a combination of two elements: the conviction that threats and intimidations will lead to results and the inability to see things as they are.

The problem is not with the United Nations, it is with Israel. The United Nations is the institution that created Israel and nurtured it. The United Nations is not anti-Israel, but it is opposed to the policies of Israel that violate the Charter, international law and the resolutions of the Organization based on that law. It is opposed to the policies that have destroyed and continue to destroy the lives and future of another people. The United Nations wants peace and security for the Israeli people, but it also wants peace, security and the right to self-determination for the Palestinian people.

What is required, then, is not a change in the position of the United Nations, but a change in the policies and positions of Israel. Israel must understand this and its main ally must stop pampering Israel through automatic protection and pressure on others to accept Israel's positions. We must all reject the current unlawful Israeli positions. If we are unable to change the situation on the ground, we must at least insist here, in the General Assembly, on affirming positions that are correct.

In our world there is no room for walls, especially if they are built in occupied territories, with the aim of expansion and annexation. Let us unite to stop the war and remove this destructive obstacle to peace. Let us unite for peace. We trust that the judges of the International Court of Justice will uphold international law, thus contributing to the achievement of that goal.

Mr. Gillerman (Israel): The temptation to dissect the litany of lies that we have just heard is very, very great. But the dangers in descending to that level seem even greater and, because of this, I will stick to my prepared statement.

I should stress at the outset that my comments are without prejudice to our clear position of principle that the convening of this emergency special session at the behest of Syria and other delegations is in violation of the fundamental conditions of the Uniting for Peace procedure and the United Nations Charter. As you know, Mr. President, we have raised this concern with you and with other delegations. The Palestinian side has expressly claimed, both orally and in writing, that this meeting is taking place under the Uniting for Peace procedure, but one of the fundamental preconditions

for that procedure, namely the failure of the Council to meet its responsibilities, is patently unfulfilled. This requirement was not met last month when the Assembly convened after the Security Council rejected the resolution on the security fence, not because of a lack of unanimity amongst members, but because of the refusal of the sponsors of the draft resolution to engage in any genuine negotiations on their blatantly one-sided text. And this same requirement has not been met today, barely a week after the Council unanimously adopted resolution 1515 (2003) on the road map. This is far from the only defect with this meeting.

Let us leave aside for the moment the obvious legal and political abuse involved in this never-ending tenth emergency session, the procedural invalidity of which is clear. Among other failings, this so-called emergency session has taken place despite the fact that the issue of requesting an advisory opinion from the International Court of Justice was not even raised before the Council, despite the fact that the Assembly is presently in regular session and despite the fact that a majority of Members have not requested that an emergency session be convened. Let me be clear. We consider the resolutions adopted by this so-called tenth emergency session to be ultra vires and an abuse of the powers of the General Assembly under the Charter.

We need not repeat in detail our arguments regarding the legality of and necessity for the security fence. Our position has been set forth both in the Council and in the Assembly, as well as in correspondence with the Secretary-General and in a variety of other official documents and statements. As we have stated before, Israel does not deny that in exercising its inherent right to self-defence against terrorism of the most brutal kind, it must act within the limits of international law. But we do reject attempts to apply that law incorrectly and selectively, to misrepresent the nature and purpose of the security fence and to ignore the context in which Israel's actions are taken.

Let me be perfectly clear: this is the Arafat fence. This is the fence that Arafat built. His terrorism initiated it and made its construction inevitable. If there were no Arafat, there would be no need for a fence. My comments regarding the fence will be brief and non-exhaustive. The security fence is a temporary, proven, necessary and non-violent measure adopted in accordance with international and local law to defend the people of Israel from a continuing and vicious campaign of terrorism that has killed hundreds of innocent civilians and will kill thousands more, if not prevented. As long as the Palestinian leadership continues to flout its most basic obligations to fight terrorism, there is simply no alternative to it. Indeed, the only reason for the construction of the fence is the Palestinian strategy of terrorism. As soon as the terror ends, the fence will no longer be necessary. The fence is not a border and has no political significance. It does not change the legal status of the territory in any way.

Israel remains committed to determining the final status of the West Bank and Gaza Strip, including the issue of the border, through negotiations as has been agreed by the parties. As we have proven before, we will be ready to dismantle or alter the route of the fence in accordance with any political settlement reached. If built along the 1949 Armistice Line, the so-called Green Line, which was never intended to enjoy, nor has it every enjoyed, legal status as an international boundary, the fence would constitute an arbitrary and artificial line that simply would not adequately fulfil its sole function: the prevention of terrorist attacks against civilians. The route of the fence is determined not by politics, but by a difficult and painful balance between security, humanitarianism and topographical considerations.

Israel is working to ensure that the fence does not cause undue hardship to local Palestinian residents, both through extensive consultations with the local population over the route of the fence and through an active process of appeals and judicial review. We will continue to engage in this process and seek individual solutions to problems that arise. At the same time, we reiterate that the fence will allow a significant reduction in the presence of Israeli forces in the West Bank, thus improving overall humanitarian conditions for the majority of Palestinian residents. We stress that while the rights of local residents are legitimate and important, we should not forget that the right not to be murdered by terrorists is a right that is certainly no less important and, if violated, is impossible to redress.

Some have argued that the fence is counterproductive to the peace process and to future negotiations. We believe this assessment to be mistaken and unjustified. If anything, by reducing the capacity of Palestinian terrorists to infiltrate and carry out acts of terror, the fence will help take terrorism out of the equation, restore calm and encourage an environment in which negotiations and the implementation of the road map can take place.

In those areas where it has been erected, the fence has already significantly reduced the terrorist threat, and it has aided in preventing multiple suicide attacks, just in the last few weeks. If, because of the fence, terrorism ceases to be a tool readily available to the enemies of peace seeking to derail the process, the chances of making progress at the negotiation table can only be enhanced.

In fact, in spite of what some may perceive as a recent calm, a very misleading recent calm, the terrorists have not stopped for one minute to try and carry out their barbaric acts. Since that horrific bombing in Haifa on 4 October and up to 4 December, a period of just two months, the Israeli security forces have foiled 27 attempts to bring death and destruction to Israel's cities. Fourteen of these attempts were suicide attempts foiled and stopped minutes before they were to be perpetrated.

To give just one example, only last Wednesday, Israeli forces arrested two suicide bombers who were members of the Palestinian Authority's own security services and also affiliated with a terrorist organization, Islamic Jihad, headquartered in Damascus, Syria. The two terrorists, Munir Rabia and Murad Zeytun, were on their way to perpetrate a suicide attack against Israeli schoolchildren in a school in Yokneam near Haifa. If this is not shocking enough, the terrorists are reported to have told investigators that, in order to infiltrate into Israel, they had sought out an area where the security fence had not yet been constructed. Had they succeeded in their horrific plan, innocent schoolchildren would have been murdered in cold blood and attempts to restart the peace process would have been seriously harmed. In this reality, where Palestinian Authority employees seek to murder schoolchildren, how can it be seriously argued that the fence is counterproductive to the peace process, when it is crucial to stopping the terror that seeks to destroy that very process?

The fence is not an obstacle, not to a two-State solution nor to the creation of a contiguous, viable and democratic Palestinian State, living side by side in peace and security with Israel. It will help create a terror-free environment, in which a peace can be agreed through negotiations, and when the terrorism has ended and negotiations bear fruit, the fence can make way to any territorial solution agreed upon by the parties.

Prompted as it was by a clearly one-sided resolution, it is hardly surprising but still very unfortunate that the Secretary-General's report, document A/ES-10/248, issued last Friday, should lack fairness, balance and perspective. Even in its presentation of Israel's legal position, the report makes virtually no reference whatsoever to the brutal and calculated campaign of terrorism being waged against Israel, which the fence is specifically designed to counter.

Since the outbreak of the latest wave of Palestinian violence in September 2000, there have been literally thousands of separate terrorist attacks: bombings, rocket attacks, stabbings and shootings, directed against both Jewish and Arab citizens of Israel, by Palestinian terrorist groups. The planning and preparation of such terrorist attacks, including mega-terror attacks against targets such as skyscrapers, fuel depots and chemical plants, continues unabated and unrestrained by the Palestinian leadership and its security personnel. The silence of the report on the threat posed by Palestinian terrorism and the complicity of the Palestinian leadership is incomprehensible, given that the construction of the fence is a response to that threat.

The question of whether Israel's defensive measures are permissible depends on whether they are proportionate to the threat faced by Israel and its citizens. As numerous leading scholars and judicial bodies, including the International Criminal Tribunal for the former Yugoslavia, have found, the determination as to whether a defensive measure is disproportionate in any given circumstance is a particularly complex and delicate one that needs to be measured against the amount of force or other defensive actions necessary to remove the threat that is posed. It requires legal, operational and security expertise, and a close familiarity with the extent and nature of the threat.

And yet this fundamental principle of proportionality, accepted in the Palestine Liberation Organization (PLO) legal position attached to the report, is sadly quite absent from the report itself. To the contrary, the report's conclusion seems to rewrite the international law of self-defence in a quite alarming manner. The report states:

> "I acknowledge and recognize Israel's right and duty to protect its people against terrorist attacks",

but then it goes on the qualify this principle, saying that not only must this duty be carried out in a way that is in accordance with international law, but also it must not make

"the creation of an independent, viable and contiguous Palestinian State more difficult"

or increase "suffering among the Palestinian people".

In other words, any Israeli measure, however many innocent lives it may save and however much it may serve to release the stranglehold of terrorists on Palestinian society — if it has any impact, even temporary, on the lives of Palestinians, it is unacceptable.

This is not just bad law, it is bad morality. Let us be quite frank. There is no way of protecting the lives of the innocent from terrorists who hide in the heart of civilian areas without having some impact on the lives of those the terrorists have chosen to hide among and those that have chosen to offer them shelter. At a time when every Israeli, and every Jew, is a declared target for Palestinian terrorist organizations, the question is how to allocate, humanely and effectively, the balance of hardships between those who are blown up on buses and those who are held up at checkpoints or are otherwise disadvantaged. This is not an easy balance, and the painful dilemma it poses is one that Israel struggles with every day. But it is a dilemma which this report seems not to have struggled with for one minute.

The approach of this report, like that of this emergency session, which ignores the brutality of Palestinian terror and the fundamental Palestinian obligation — restated in every Israeli-Palestinian agreement and at the very outset of the road map — to fight terrorism and dismantle the terrorist infrastructure, is profoundly troubling. Not only will the United Nations not call on the Palestinian side to stop the terror, the report says, but this Organization will not allow Israel to do it either.

Given the abundant energy and resources devoted to examining Israeli defensive counter-terrorist measures, it may be instructive to consider the Assembly's response to other actions embarked upon by States in fighting terrorism. In past decades, literally thousands of civilians, including Palestinian civilians, have been killed by certain Arab States in the Middle East, often in the name of fighting terrorism; and yet, the Assembly has remained silent. In 1982, one State in the Middle East, claiming to be fighting terrorist insurgents, murdered some 20,000 of its own civilians in the towns of Homs and Hama; and yet, the Assembly remained silent.

Since that time and to this day, countless counter-terrorist operations have been embarked upon, with a greater or lesser degree of legitimacy. Whole cities have been razed to the ground, thousands have been killed, maimed or tortured by various countries around the globe; and yet, the Assembly has been silent.

This sacred silence has been broken only in the case of Israel. And each time, the Assembly has been galvanized into action, not to condemn the brutal acts of terrorism but to condemn Israel's response to it. After a two-State solution was rejected by the Palestinian side at Camp David and after three years of unending terrorism, Israel has reluctantly adopted a non-violent defensive measure to protect its citizens from death. It has done so while seeking to balance security and humanitarian considerations and exhibiting infinitely more concern for the welfare of innocent civilians than either the terrorists or other States that have been spared the scrutiny of the Assembly have shown.

The double standards are astounding. Just last week in the Third Committee, Israel was denied the opportunity to present for vote a resolution on Israeli children, even after a resolution on Palestinian children was adopted. We were told then that Israeli children deliberately targeted by terrorists would not receive the protection of the Assembly. Today, we are being told that we cannot even protect them ourselves.

How dare the people who would not even consider protecting Israeli children by words tell Israel that it cannot protect them by deeds? How low, how callous can duplicity, hypocrisy and double standards sink?

These are the children we are talking about and are trying to protect. This is Tomer Almog, age 9, who was brutally murdered by a suicide bomber at a restaurant in Haifa on 4 October. He was slain together with his two grandparents, his father and his cousins, while his family was peacefully sitting down to lunch in a beachfront restaurant. And this is his brother, Oran Almog, age 10, who lost his eyesight in the same attack. One of his eyes was shattered, and while we were all sitting here in this Hall last month cynically having the same cynical debate in yet another emergency special session, a world-renowned surgeon in Birmingham, Alabama was trying to save the beautiful eyes of this lovely little boy. Oran can now, with one eye — the other was shattered completely — barely distinguish between light and dark. But he is watching us all today — he is watching this Assembly today — to see whether we can distinguish between the

forces of light that seek to protect our children and the forces of darkness that are trying to extinguish them.

But the double standards do not end there. If the professed concern of the Assembly for the welfare of Palestinian civilians were indeed genuine, we would have seen by now a plethora of resolutions condemning Palestinian terrorism and requesting the Secretary-General to submit detailed reports on such things as the misuse of funds by the Palestinian leadership, the incitement of children to suicide terrorism, Palestinian human rights violations and the policy of encouraging and funding terrorist groups adopted by regimes in the region.

Let us take corruption as an example. The Palestinian economy has been plundered for years by its own leadership, to the grave detriment of the Palestinian people, without the General Assembly so much as raising the issue for discussion. About one month ago, an International Monetary Fund audit uncovered the fact that between 1995 and 2000 Yasser Arafat diverted fully $900 million from the Palestinian Authority budget into a special bank account under his personal and unmonitored control. Recent reports indicate that Arafat's office — his office alone, not the Palestinian Authority — receives some $9 million a month, a full $2 million more than the entire amount allocated per month to the Palestinian health system.

European Union audits have disclosed that $20 million in Egyptian funds meant to build low-income housing were instead turned into a luxury apartment complex that was given over to top Palestinian Authority officials and Arafat cronies. Money intended for feeding, housing, clothing and educating Palestinian civilians has been diverted, not just for personal gain but to fund terrorist groups, including, as was recently revealed, direct payments by the Palestinian Authority of $50,000 a month to members of the Al-Aqsa Martyrs Brigades, responsible for scores of suicide attacks in the past three years.

The majority of Palestinian people, who suffer greatly as a result of this unprecedented corruption, are denied full knowledge of these facts because of the lack of a free press and of free access to information in Palestinian society. But these facts are known to the world and to this Assembly. Yet where is the indignation? Much of the stolen money that perpetuates and greatly exacerbates the humanitarian suffering of innocent Palestinians is donor money. It is your money. Yet where are the resolutions, the reports of the Secretary-General, the demands that this policy — to use a familiar phrase — cease and be reversed? Donor money flows into the pockets of Arafat and his wealthy accomplices, terrorism and incitement continue unabated, and all the while anti-Israel initiatives, led by States that treat the United Nations as their private property, take up hugely disproportionate amounts of the Organization's time and resources, while poor and developing countries must scramble and plead for the attention of the Assembly and the assistance of the international community.

Israel is not immune from legitimate and balanced criticism. But we have the audacity to demand that some of the repressive regimes in our neighbourhood that sponsor terrorism and systematically violate human rights should be of equal, if not greater, concern to the international community. At the very least, the representatives of those regimes should not be allowed to dictate the conduct of this Assembly. What has been going on here is not justice or fair criticism; it is hypocrisy and double standards. It is self-righteous, self-serving and deeply counterproductive. It is the United Nations at its worst. And it rewards terrorism.

The draft resolution presented for adoption at this meeting again hopelessly fails to reflect the reality on the ground or to help the Israeli and Palestinian peoples move closer to a peaceful settlement. In the draft resolution we are presented, yet again, with the harmful, divisive, illegal and diversionary tactic of a request for an advisory opinion. Instead of rejecting that destructive idea out of hand, delegations are yet again expected to plead, barter and compromise on principle in the hope that it will be removed from the table. Surely by now delegates must be aware that unless and until we stop playing this game, the exploitation and extortion will only continue. Israel will vote against the draft resolution, and we strongly urge delegations that care about peace, about the International Court of Justice and about restoring the credibility and reputation of the United Nations, to do the same.

The preposterous nature of the draft resolution presented today is highlighted by the fact that it pretends to seek guidance from the International Court of Justice on the very issues on which the General Assembly has already determined its response. If this initiative was reckless and irresponsible when introduced a month ago, it is patently absurd today. What guidance is sought here? How exactly is it relevant to the work of the Assembly? And how can it be fair or just to

purport to seek legal advice on a non-violent defensive measure adopted by Israel to protect against terrorism, while ignoring the terrorism itself that destroys lives in cold blood and without discrimination?

This is an abuse of the International Court of Justice and of the advisory opinion procedure of the highest order, and it constitutes a dangerous precedent for all States. The politically biased text, rife with supposed legal conclusions, makes a mockery of the Court and threatens to undermine its status. Moreover, it raises a question that directly relates to matters fundamentally in dispute between various parties in the region, when the parties have already agreed, and the road map itself affirms, that these issues can only be resolved by negotiation.

At a time when there is hope for renewing the negotiating process through the road map, this proposal, and the attempt to involve a new actor in the conflict, is especially counterproductive. It will severely complicate, undermine and delay — if not halt altogether — current efforts to restart the implementation of the road map. Indeed, it contradicts the very letter and spirit of the road map and the role of the United Nations as one of the main sponsors of the road map.

Either the Palestinian side must finally get serious about complying with their obligations, or they can continue to abuse multilateral forums to try to score political and propaganda points. They cannot keep doing both. It is our genuine hope that, after seeing the misery and despair on all sides that its current strategy has created, the Palestinian side will finally act to confront terrorism and end incitement. The moment it does so, it will find in Israel a willing partner. Until then, the Arafat fence — the fence that Arafat's actions necessitated — will stand to protect our children from further terrorism.

Today, the delegates in this Hall must ask themselves one more question. The fifty-eighth regular session of the General Assembly is coming to an end. Looking back on it, we must ask ourselves if we are proud of it. Have we accomplished anything? Have we made the world a better place? Have we lived up to the high standard and noble aims that you, Mr. President, set for us in September? And today, especially, we must ask one more question: do we lead, or are we being misled? Are we doing right or are we being manipulated? Do we stand for what is right and just, or do we side with evil?

I raise these issues only to emphasize a point we have made repeatedly in this Assembly. Peace, prosperity and security for both Palestinians and Israelis will not be found in this Hall or in any other organ of the United Nations. Only the end of the morally bankrupt strategy of terror that glorifies murder as martyrdom would obviate the need for Israeli security measures, including the security fence, pave the way for peaceful negotiations and concessions and end the suffering of both peoples.

No amount of United Nations debate, distorted texts or abusive diplomatic manoeuvres can alter that basic reality. No one-sided resolution, no ill-conceived and harmful attempt to request an advisory opinion and no report can substitute for it — unless, miraculously, we find the courage to change. We all have the opportunity to start doing that today by rejecting this cynical draft resolution.

Mr. Rastam (Malaysia): I do not wish to take too much of the General Assembly's time.

On behalf of the Non-Aligned Movement, I wish to thank you, Mr. President, for having convened this meeting of the resumed tenth emergency special session of the General Assembly. The fact that this meeting has been convened is extremely important. It will enable the General Assembly to consider and respond to the findings of the Secretary-General, as contained in his report in document A/ES-10/248 of 24 November 2003, prepared pursuant to General Assembly resolution ES-10/13. I wish to thank the Secretary-General for his incisive and informative report, which is extremely useful for the Assembly's deliberation on this important question.

It may be recalled that debate on this question began in the Security Council on 14 October 2003. The Council failed to act. The debate was brought to the General Assembly during a resumed session of the tenth emergency special session of the General Assembly on 20 October 2003. On both occasions, the Non-Aligned Movement stated its position on the Israeli expansionist wall. The Non-Aligned Movement stated that the wall was illegal, that it must be dismantled and that its further construction must be immediately discontinued. I wish to reiterate that position today as follows:

First, the wall, sections of which are constructed deep inside the occupied Palestinian territory, departs from the Armistice Line of 1949 and is therefore illegal under international law.

Secondly, the wall gravely violates the Fourth Geneva Convention in that it involves the illegal and de facto annexation of massive areas of Palestinian land and resources, the transfer of a large number of Palestinian civilians and the further denial of the Palestinians' human rights, resulting in further dire humanitarian consequences for this already deprived people.

Thirdly, the wall presents a major obstacle to the implementation of the road map, as it undermines the creation of a viable contiguous Palestinian State and thereby hampers the realization of the two-State solution.

Fourthly, the wall could trigger the end of the Middle East peace process, since it has the potential for provoking further, unprecedented violence among the severely oppressed Palestinians in their desperate effort to survive under the brutal oppression of the Israeli Government.

The conclusions and observations made by the Secretary-General have confirmed what the Non-Aligned Movement has stated all along. The Secretary-General has observed and concluded, inter alia, as follows.

First, Israel is not in compliance with the General Assembly's demand that it "stop and reverse the construction of the wall in the Occupied Palestinian Territory" (*A/RES/ES-10/13, para. 1*).

Secondly, the construction of the wall in the West Bank is

> "a deeply counterproductive act. The placing of most of the structure on occupied Palestinian land could impair future negotiations" (ibid., *para. 29*)

and

> "damage the longer-term prospects for peace by making the creation of an independently viable and contiguous Palestinian State more difficult" (ibid., *para. 30*).

Thirdly, the security of both Palestinians and Israelis can be assured

> "only through a just, comprehensive and lasting peace settlement based on Security Council resolutions 242 (1967) and 338 (1973)" (ibid., *para. 31*).

As we revisit this question at this resumed tenth emergency special session, it is clear that Israel has chosen not to comply with the demand of the General Assembly, which was clearly pronounced in resolution ES-10/13. As of today, Israel has neither stopped nor reversed the ongoing construction of the wall. Indeed, Israel has released the first official map showing the planned route of the wall and a declaration of intent to complete it by 2005. The map was defiantly posted on the web site of the Israeli Ministry of Defence on 23 October 2003, two days after the General Assembly adopted resolution ES-10/13.

The Secretary-General's report has confirmed most of the facts that were available from various sources, even before the Israeli Government released the official map. The Secretary-General has stated that Israel continues with the construction of the wall in the occupied Palestinian territory along the north-east boundary of the West Bank and East Jerusalem, with the levelling of land for a section of the wall in the north-west of the West Bank and with the issuance of land requisition orders.

The Secretary-General has also stated that, based on the route on the official map, approximately 975 square kilometres, or 16.6 per cent of the entire West Bank, including the depth barriers and the portions in East Jerusalem, will lie between the wall and the Green Line. This area, the Secretary-General further states, is home to approximately 17,000 Palestinians in the West Bank and 220,000 in East Jerusalem. If the full route is completed, 160,000 Palestinians will live in enclaves completely encircled by the wall. The planned route incorporates nearly 320,000 settlers, including approximately 178,000 in occupied East Jerusalem.

The Secretary-General has also commented on the humanitarian and socio-economic impact of the wall on the Palestinians. He has stated that the wall "appears likely to deepen the fragmentation of the West Bank" (*A/ES-10/248, para. 23*). The Israeli checkpoints and blockades would cause socio-economic harm to the Palestinians, by, inter alia, severely limiting access to land, jobs and markets. The town of Qalqiliya is completely surrounded by the wall, according to the Secretary-General, with "the only exit and entry point controlled by an Israeli military checkpoint" (ibid., *para. 24*). This observation by the Secretary-General has indeed confirmed what was previously stated by many: Israel has virtually turned Qalqiliya into one large prison, isolating the town's 41,606 residents. Similarly, other parts of the wall will create further isolated enclaves, dislocating Palestinians from their land and families.

The Non-Aligned Movement reaffirms that a just, comprehensive and lasting settlement to the conflict can only be achieved on the basis of the implementation of Security Council resolutions 242 (1967) and 338 (1973). In addition, serious efforts must be undertaken to achieve a two-State solution that would ensure the creation of a sovereign, independent and viable State of Palestine and the existence of Israel, both living side by side in peace and security within secure and recognized borders, as envisaged in Security Council resolutions 1397 (2002) and 1515 (2003).

The Non-Aligned Movement believes that an advisory opinion from the International Court of Justice would provide an independent and impartial pronouncement on the legal consequences arising from the construction of the wall by Israel, taking into consideration the rules and principles of international law, including the Fourth Geneva Convention of 1949 and relevant General Assembly and Security Council resolutions.

The Non-Aligned Movement believes that this Assembly should muster the necessary political will, wisdom and courage to decisively respond to this question now before us. We remain fearful of the inevitable damaging and dangerous consequences if the wall were to continue along its planned route. The Non-Aligned Movement firmly believes that the passage of draft resolution A/ES-10/L.16 today would send a powerful message to Israel. It would also demonstrate in a tangible way the continued concern and sympathy of the General Assembly for the dire plight of the Palestinian people, who have been severely disadvantaged by the existence and continued construction of the wall, and the plight of those who have and will become virtual prisoners in their own homeland behind the wall and the trenches, fences and security roads. It would be most unfortunate and tragic indeed if the General Assembly were to fail in its responsibility to uphold justice and promote peace. Justice must be done in Palestine and for the people of Palestine, and it must be done expeditiously.

The President: May I ask for a reduction in the noise level, which has become very loud? I ask those who are having their side meetings to please take their seats, if possible, so that the speakers can be heard in some degree of silence.

I now give the floor to the representative of Senegal, Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People.

Mr. Fall (Senegal) (*spoke in French*): On behalf of my delegation, Senegal, I wish to associate myself with the statement just made by our colleague, the Ambassador of Malaysia, on behalf of the Non-Aligned Movement. I wish to thank you for having given me the floor on this agenda item, in my capacity as Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People.

The tenth emergency special session has been reconvened once again because the Israeli Government persists, alas, in ignoring resolution ES-10/13, adopted by the Assembly on 21 October. You will recall that in that resolution, the Assembly requires Israel to stop the construction of the wall in the occupied Palestinian territory, including in and around East Jerusalem, and to restore the pre-existing situation since the unlawful construction deliberately departs from the Armistice Line of 1949, and thus contravenes relevant provisions of international law.

The Assembly today has before it a report requested of the Secretary-General pursuant to that resolution, and you will have seen that the Secretary-General's conviction is clearly established. It is articulated in paragraph 28 of the report (A/ES-10/248), which is crystal clear and has no need of being explained, annotated or qualified. I quote the Secretary-General:

> "In keeping with the request of the General Assembly in resolution ES-10/13, I have concluded that Israel is not in compliance with the Assembly's demand that it 'stop and reverse the construction of the wall in the Occupied Palestinian Territory'."

Undoubtedly, the report tells us in substance that Israel is resolved to continue the construction of the Barrier in defiance of the opinion of the international community, and particularly that of the United Nations, whose rights and competence in dealing with the question of Palestine are being denied by Israel.

The Israeli Government still claims that the building of the separation wall, coyly christened a fence, forms part of its security measures and cannot be likened to the delimitation of a political border, and that this measure does not seek to prejudge or anticipate the outcome of the negotiations on final status. But if that is the case, we need to ask why Israel did not build a wall parallel to the Green Line on its own territory. This question was asked here in this very

Hall on 20 October, without — and this is something that I especially deplore — any satisfactory answer.

In actual fact, the configuration of the fence, which Israel declared it is ready to change, is that of a barrier reinforced by sophisticated and complex auxiliary structures, in the form of a concrete wall, in some places cutting deeply into Palestinian territory and separating Palestinians from other Palestinians. This Barrier is a means of unilaterally setting the borders of the future Palestinian State — whatever our Israeli friends may say — and this Barrier is likely, without any doubt, to compromise negotiations on final status once the parties reach that stage.

Moreover, the building of the wall has already put a brake on Palestine's economic development, considerably worsened the humanitarian situation, caused fragmentation in Palestinian society, and exacerbated the already unbearable living conditions for the Palestinians, who have thus been compelled to leave their lands and to wander, dragging a burden of despair, resentment and anger.

It is regrettable to see that the Israeli Government thus far has turned a deaf ear to all the appeals and admonitions of the international community to dismantle the wall and put an end to such a disputed project. The intransigence shown by the occupying Power would seem to sound the death knell of the efforts currently under way to reconcile the two parties and bring them back to the negotiating table.

Yet today there is still a chance, however tenuous, of relaunching the political process. The new Palestinian cabinet is in place, and has declared itself ready to restore public order to end the violence and to work with the Israeli party. Talks are still going on, admittedly laboriously, among Palestinian groups with a view to a possible ceasefire with Israel. Civil society has just launched the so-called two-track process by publishing the Geneva initiative and the Nusseibeh-Ayalon declaration of principles. It is, nonetheless, the case that the measures taken by Israelis on the ground are utterly counterproductive in that they are likely to undermine the delicate and praiseworthy endeavours of the Quartet to restore peace.

Thus I need hardly state again that we shall never tire of urging our Israeli friends to listen finally to the voice of reason, to join the path of peace and heed the urgent appeals of the international community by immediately ceasing construction of the wall and lifting the siege imposed on the Palestinian people, including President Yasser Arafat, who remains unjustly confined behind his very last line of defence in the Muqata in Ramallah.

As Deputy Avraham Burg, the former President of Knesset, graciously recognized with admirable clear-sightedness, building walls or intimidating, less still humiliating, an occupied people is not the way for Israel to enjoy greater security. Rather the way is to restore their confiscated lands and dignity and their shattered hopes to the oppressed Palestinians. To our Israeli and Palestinian friends, we would state once again that the best way of putting an end to the conflict is to achieve a comprehensive, peaceful settlement based on the road map, which provides for two States, Israel and Palestine, living side by side in peace and security within secure and recognized borders on the basis of resolutions 242 (1967), 338 (1973), 1397 (2002) and 1515 (2003) of the Security Council.

With this in mind and in our concern to make a modest contribution to the plan to salvage the road map, our Committee urges the General Assembly to support the sponsors of draft resolution A/ES-10/L.16 in their action. The specific objective in the light of the report of the Secretary-General is to apply to the International Court of Justice for an advisory opinion on the legal consequences, considering international law and the relevant resolutions of the United Nations, arising out of the construction of the wall that Israel is building in the occupied Palestinian territory, including within and on the periphery of East Jerusalem.

In conclusion, it is my ardent hope that the international community will remain all the more watchful and do its utmost to induce Israel to abandon immediately all its unlawful activities associated with the building of the infamous Barrier. Our Committee exhorts the Israeli Government and the Palestinian Authority to commit themselves with determination to political negotiations, their sole weapons being the will and courage to work for peace, so as to make the Middle East a prosperous region sheltering two States, Israel and Palestine, in peaceful coexistence within secure and internationally recognized borders.

Mr. Zarif (Islamic Republic of Iran): On behalf of the Organization of the Islamic Conference group at the United Nations, I wish to thank you for convening the resumed tenth emergency special session of the General Assembly. The General Assembly, in its

resolution ES-10/13, of 21 October 2003, adopted at the resumed tenth emergency special session, decided that the construction of the wall in the occupied Palestinian territory was "in departure of the Armistice Line of 1949 and ... in contradiction to relevant provisions of international law". The Assembly therefore "demand[ed] that Israel stop and reverse the construction of the wall ...".

The fact that Israel explicitly ignored the decision of this Assembly and insisted, in its contempt for the will of the international community, on continuing the construction of the expansionist wall, brought the Secretary-General to conclude, in his report contained in document A/ES-10/248, that "Israel is not in compliance with the Assembly's demand". The Secretary-General details in his report the ongoing Israeli activities with regard to the construction of the wall, including land requisition, levelling of land and the recent release of the first official map of the wall.

The report also details how the separation wall cuts deep into the occupied West Bank up to 22 kilometres from the Green Line and how it, if completed, will result in de facto annexation of 16.6 per cent of the entire West Bank, forcing about 300,000 Palestinians to live in enclaves and in isolation from their agricultural lands, markets, workplaces and public services.

The wall must be seen in the context of the continued attempts by Israel to deprive the Palestinians of their inherent national rights — this time under the guise of security. It is along the same line of previous attempts, such as Jewish settlement activities and unlawful annexation of East Jerusalem. In constructing the wall, the Israelis are intent on complementing and underpinning their settlement building activities on occupied Palestinian territory in contravention of international law, as those settlements are the principal beneficiaries of the wall.

The expansionist wall under construction marks the beginning of a new phase in the plight of the Palestinian people. The wall will cause direct harm to hundreds of thousands of Palestinians living in dozens of villages and towns. It means the demolition of more Palestinian houses and businesses, the ruin of more Palestinian lives and the further degradation of the environment. As the latest report by Mr. John Dugard, the Special Rapporteur of the Commission on Human Rights in the Palestinian territories, indicates, the Palestinians are moving out of their homes in the affected areas to the security of what remains of Palestine. The report specifies, for example that "already some 600 shops and enterprises have closed in Qalqilya, as a result of the construction of the Wall". It concludes that, "The Wall will therefore create a new generation of refugees or internally displaced persons". Thus, the magnitude of the injustice resulting from the construction of the separation wall is indeed alarming. If unchecked, it would exacerbate the plight of the Palestinians and render them even more desperate and with even less hope for a better future. The enormous consequences for the whole region would be self-evident.

Now that the unfortunate exercise of veto at the Security Council has prevented it from fulfilling its responsibility with regard to the Palestinian question and that the recent decision of the General Assembly has been flouted by Israel, this Assembly has to proceed with the next necessary step. We believe that the International Court of Justice, as the principal judicial organ of the United Nations system, is competent and best placed to provide an advisory opinion on the occupying Power's legal obligations under relevant provisions of international law with regard to the construction of the wall in the occupied Palestinian territory and the legal repercussions of such action.

Allow me to close by stressing the need to take concerted action to uphold international law. The first step is to provide overwhelming support to the draft resolution before the Assembly.

Mr. Spatafora (Italy): I have the honour to speak on behalf of the European Union. The acceding countries Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia, the Associated Countries Bulgaria and Romania, the countries of the Stabilization and Association Process and potential candidates, Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Serbia and Montenegro, as well as the European Fair Trade Association countries Iceland and Norway, members of the European Economic Area, align themselves with this statement.

After less than two months from its last meeting on 20 October, this emergency special session is convened again to discuss the issue of the barrier that Israel is building in departure from the Green Line within the occupied territory of the West Bank.

The European Union is particularly concerned by the route marked out for the barrier in the occupied

West Bank. The envisaged departure of the barrier from the Green Line could prejudge future negotiations and make the two-State solution physically impossible to implement. It would cause further humanitarian and economic hardship to the Palestinians. Thousands of Palestinians west of the fence are being cut off from essential services in the West Bank. Palestinians east of the fence will lose access to land and water resources. In this context the European Union is alarmed by the designation of land between the barrier and the Green Line as a closed military zone. This is a de facto change in the legal status of Palestinians living in this area, which makes life for them even harder.

Hence the European Union has presented resolution ES-10/13 approved by the General Assembly on 21 October demanding Israel to stop and reverse the construction of the barrier inside the occupied Palestinian territories, including in and around East Jerusalem, which is in departure of the armistice line of 1949 and is in contradiction to the relevant provisions of international law.

The European Union thanks the Secretary-General for the detailed and pertinent report he presented pursuant to this resolution. The European Union shares the concerns expressed by the Secretary-General in this report and fully supports the observations he made.

The European Union regrets the fact that Israel, according to the report of the Secretary-General pursuant to General Assembly resolution ES-10/13, is not in compliance with the Assembly's demand that it stop and reverse the construction of the wall in the occupied Palestinian territories.

The European Union believes that the proposed request for an advisory opinion from the International Court of Justice will not help the efforts of the two parties to relaunch a political dialogue and is therefore inappropriate. It is for that reason that the European Union will abstain on the relevant draft resolution before the emergency special session.

The European Union remains firmly committed to the clear objective of two States — Israel and a viable and democratic Palestinian State — living side by side in peace and security within the framework of a comprehensive peace in the Middle East, as laid out in the road map presented by the Quartet to the parties on 30 April 2003. In that context, the European Union welcomes the unanimous endorsement of the road map by the Security Council in resolution 1515 (2003).

The European Union is deeply concerned by the situation in the region and has noted that, despite the international community's support for the quest for a just and lasting solution, so far the parties concerned have not made a sufficient effort to seize the opportunity for peace outlined in the road map. We therefore call once again on both parties — Israel and the Palestinian Authority — to live up to the commitments they undertook at the Aqaba Summit on 4 June 2003, and stress the need for rapid implementation of the road map and compliance with its provisions.

The European Union also urges all sides in the region to immediately implement policies conducive to dialogue and negotiation. The European Union's relations with those that take steps in a contrary direction will inevitably be affected by such behaviour.

Despite the bleak picture presented in recent months, the European Union welcomes and is encouraged by new initiatives from Israeli and Palestinian civil society aimed at promoting rapprochement, confidence-building and the establishment of a lasting peace. The Geneva initiative confirms civil society's willingness to attain peaceful coexistence by means of two independent, viable and prosperous States, living side by side in security, to the benefit of all Israelis and Palestinians, as well as of all countries in the region. It is also helpful to increase public awareness on both sides of the need to identify the necessary actions and reciprocal concessions that will have to be made to achieve a negotiated settlement of the conflict.

In that regard, the European Union considers the document presented on 1 December in Geneva to be a valuable contribution by civil society in support of the Quartet's road map — which remains the only path for the immediate resumption of the peace process.

The European Union wishes once again to emphasize its strong condemnation of the suicide attacks and other acts of violence that have recently occurred in the region and calls on all sides to refrain from any provocative acts that could further escalate the situation. Terrorist attacks against Israel have no justification whatsoever. The European Union reiterates that the fight against terrorism in all its forms remains one of their priorities, as well as of the entire international community. It is the duty of all countries, in particular of those in the region, to actively

cooperate in the fight against terrorism and to refrain from supporting terrorist organizations, either directly or indirectly.

The European Union also stresses once again that the Palestinian leadership must concretely demonstrate its determination in the fight against extremist violence, in compliance with the road map. We urge the Palestinian Government and the Palestinian President to take immediate steps to confront individuals and groups conducting and planning terrorist attacks. The European Union still believes that the Palestinian security services should be consolidated under the control of the Prime Minister and the Interior Minister.

While recognizing Israel's right to protect its citizens from terrorist attacks, the European Union urges the Government of Israel, in exercising that right, to fully respect international law, in particular human rights and international humanitarian law, including the Fourth Geneva Convention; to take maximum precautions to avoid civilian casualties; and to take no action that aggravates the humanitarian and economic plight of the Palestinian people. It also calls on Israel to abstain from any punitive measures that are not in accordance with international law, including extrajudicial killings, and to reverse its settlement policy and dismantle settlements built after March 2001.

In conclusion the European Union wishes to reiterate once again its determination to contribute, with its partners in the Quartet, to re-launching the peace process through the rapid implementation of the road map. In that connection, we stress the importance and urgency of setting up a credible and effective third-party monitoring mechanism for the road map that includes all member of the Quartet.

Mr. Kumalo (South Africa): My delegation would like to express its appreciation to you, Mr. President, for convening this emergency session on the ongoing construction of the separation wall in the occupied Palestinian territory, including Jerusalem. We would also like to thank the Secretary-General for the concise and factual report he has prepared (A/ES-10/248). In addition, we would like to associate ourselves with the statement delivered by Malaysia, on behalf of the Non-Aligned Movement.

The last time we assembled here, on 21 October 2003, the European Union and its associated States introduced resolution ES-10/13, demanding that Israel stop and reverse construction of the wall in the occupied Palestinian territory. That was a landmark resolution and more than 100 Member States joined the European Union in sending a clear message to Israel that the construction of a wall on Palestinian land is illegal. At the same time, the resolution requested the Secretary-General to submit the report that we now have before us (A/ES-10/248) on Israel's compliance with the resolution, for further action by the international community. The question before this Assembly today is whether the sponsors and other supporters of resolution ES-10/13 can summon the necessary political will to take that further action, within the United Nations system, to address non-compliance with that important resolution. The world is watching to see whether we are prepared to move from words to action: whether we will directly support the peace process by taking steps to stop the parties from acting in ways that are inconsistent with the Quartet's road map. All too often the General Assembly has been criticized for passing resolutions that are never implemented. Today we have an opportunity to act.

The Secretary-General's report informs us in clear and unambiguous terms that construction of the separation wall is ongoing and that Israel is not in compliance with the demands of the United Nations. The report makes the important point that, in the midst of the process to implement the road map — which requires each party to make confidence-building gestures in good faith — the construction of the wall can only be regarded as a counterproductive act that could impair future negotiations. Furthermore, the report raises serious concerns about the wall's violation of the rights of the Palestinian people to work, health, education and an adequate standard of living. Palestinians who find themselves trapped between the Green Line and the separation wall would now be required to renew even short-term permits to continue living on their own land.

The Palestinians have asked that we refer the legal issues related to the construction of the wall to the International Court of Justice (ICJ) for an advisory opinion. A clear precedent already exists for such an approach. In 1971 the Security Council called for an advisory opinion from ICJ on the legal consequences for States of the occupation of Namibia. That opinion proved to be a turning point in the long struggle for independence in that country. We believe that Palestinians and Israelis alike would similarly benefit from a ruling by ICJ. The General Assembly would no

more endanger the political neutrality of the Court by requesting its assistance on the matter, in line with the Charter, than the Security Council did in the case of Namibia.

The statistics provided in the Secretary-General's report (A/ES-10/248) on the numbers of Palestinians who have been, or shortly will be, imprisoned by the wall or otherwise cut off from their places of worship, agricultural lands, markets, sources of employment, schools and fellow citizens are deeply disturbing. However, no statistics can truly convey the magnitude of the human misery and destruction that the separation wall has brought to both sides.

Due to the ongoing construction of the wall and settlements, the Palestinian peace camp now finds final status issues predetermined in ways that are not favourable to the creation of a viable, independent and democratic State of Palestine. For the Israeli peace camp, the separation wall represents the failure of a decades-long effort to protect the Jewish identity of the State of Israel over the long term by trying to establish good neighbourly relations with the Palestinians and the rest of the Arab world.

There is an alternative path to the self-perpetuating and self-defeating policies of confrontation and violence. The parties could choose, instead, to re-embark on the path of direct negotiations and to call for increased international assistance from the United Nations to monitor the implementation of any agreements they reach.

The recent Geneva initiative by Palestinians and Israelis who seek peace has demonstrated that each side can, in fact, find a partner for peace. It also shows that the principle of land for peace continues to offer the only viable basis for a negotiated settlement of the dispute. The time has come for Israel and Palestine to take encouragement from this remarkable achievement of private citizens and to make the painful compromises that are sometimes necessary for peace.

Mr. Lavrov (Russian Federation) (*spoke in Russian*): The entire course of events thus far confirms that it is not possible to resolve the Israeli-Palestinian conflict. The status quo is entirely untenable, since it is not in keeping with the interests of either party. The Palestinians will not be able to achieve creation of their national homeland and the Israelis will not be able to ensure their national security.

Security Council resolution 1515 (2003) has become a unanimous appeal to the parties, in close interaction with the Quartet of international mediators, to immediately begin implementing the road map, which has now achieved international legal status. It is important to now restore direct Palestinian and Israeli dialogue. Russia hopes that this will be furthered by the prompt holding of a meeting between Israeli Prime Minister Sharon and the head of the Palestinian cabinet, Mr. Qurei.

In accordance with the road map, the Palestinian Authority needs to take effective measures to halt the actions of extremists against Israeli civilians. We note efforts taken in this regard by the Palestinians, drawing on the important assistance from Arab States, especially Egypt. The Israeli leadership, in turn, needs to implement its obligations under the road map, that is, to refrain from the disproportionate use of force and extrajudicial killings, to take effective steps to ease the economic burden on the Palestinian people and to end such impediments to peace as settlement activities and the construction of the dividing wall.

This has been clearly called for by the Secretary-General in his report (A/ES-10/248) pointing out that Israel is not in compliance with the requirements of the General Assembly. No one can deny Israel's right to protect its citizens, but this right should not be exercised by cutting off other people's lands or contravening the norms of international humanitarian law. Such action cannot be allowed to jeopardize the prospects for establishing an integral, viable Palestinian State.

We understand the motives of the sponsors of the draft resolution aimed at studying the legal consequences of the construction of the wall. However, such an approach, politically, would mean that the international community condones the current situation. In our view, at this juncture all efforts must be focused on halting and reversing the construction of the wall. This is called for in Security Council resolution 1515 (2003) and General Assembly resolution ES-10/13. This has been firmly advocated by all members of the international Quartet of mediators.

Therefore, we should not now stand idly by nor create the impression that the worst-case scenario is inevitable, but bring to bear the entire arsenal of political means in order to ensure implementation of the decisions that have already been adopted by the

international community. We believe that the General Assembly and the Security Council need to continue to closely monitor this process, while supporting the efforts of the Quartet. Russia, in close cooperation with the United Nations, the United States and the European Union, will continue active work to achieve a Palestinian, Israeli and comprehensive regional settlement based on Security Council resolutions 242 (1967), 338 (1973), 1397 (2002) and 1515 (2003).

Mr. Wagaba (Uganda): Our delegation has noted the Secretary-General's report, contained in document A/ES-10/248. Uganda remains a firm supporter of the Palestinian cause, and our proposed course of action should be seen in that light. We are looking for ways of bringing both sides back to the negotiating table.

Uganda supports a two-nation policy, whereby the State of Israel and the Palestinian State exist side by side in peace, each State with internationally recognized and secure borders. It is within this context that the conflict in the Middle East should be addressed, and as a way forward, the ongoing Quartet-led road map for peace initiative should continue to be supported. On 19 November 2003 the Security Council adopted resolution 1515 (2003) supporting the road map. This mechanism should be given a chance.

The international community, especially the United Nations, should be part of the solution and not be seen as a part of the problem in the search for peace in the Middle East. Adopting resolutions to condemn one side would only harden attitudes, a fact to which the statements by the main protagonists this morning have eminently borne testimony. The United Nations should endeavour to bring the two sides, the Palestinians and the Israelis, together to the negotiating table to arrive at an amicable solution.

Resolutions should not be perceived as solutions per se or solutions in themselves, but as viable means to a solution. Without minimizing the importance of resolutions as a way of garnering international pressure for a particular cause, Uganda believes that if adopting resolutions has not produced the desired results to date, an alternative mechanism should be found. The solution lies in a negotiated settlement by both sides. That is why, in our opinion, referring the matter to the International Court of Justice would not serve the cause of peace. We should avoid politicizing the Court, as this would undermine its impartiality and credibility. Furthermore, going to the International Court of Justice would amount to forum shopping when there is already a mechanism through the Quartet-led road map to address the issue.

Uganda will continue to support all international efforts aimed at bringing about a just and equitable resolution to the conflict and we believe that this General Assembly, the most representative and most universal of all such assemblies, can play a vital role in bringing the parties back to the negotiating table. We call upon all nations to support that process.

Mr. Requeijo Gual (Cuba) (*spoke in Spanish*): The Cuban delegation would like to thank the Secretary-General for presenting the report pursuant to the provisions of General Assembly resolution ES-10/13, issued as document A/ES-10/248. My delegation would also like to associate itself with the statement made by Malaysia on behalf of the Movement of Non-Aligned Countries.

The construction of a separation wall in the occupied Palestinian territory is part of the lengthy history of aggression, illegal settlements, occupation and violation of the most fundamental and inalienable rights of the Palestinian people. The inadmissibility of the acquisition of territory by force, which became an accepted principle of international law, was clearly addressed by this Assembly in its resolution 2625 (XXV), when it considered the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.

For that reason, the international community has always refused to recognize the unlawful Israeli settlements and Israel's annexation of East Jerusalem and the Golan, as noted respectively in Security Council resolutions 465 (1980), 478 (1980) and 497 (1981).

Israel is presenting the building of the separation wall between Israel and the occupied Palestinian territory as a security measure, but the wall is being built on Palestinian territory and is intended, according to its placement on the official maps, to enclose 16.6 per cent of the total area of the West Bank, including agricultural land and water resources and villages, representing a de facto annexation in which the security situation is being manipulated as a crass pretext for Israel's territorial expansion.

The building of the separation wall, the expansion of settlements and the construction of security roads

between the settlements themselves, and between them and Israel, together represent a clear territorial expansion, to the detriment of the Palestinian people and their inalienable right to self-determination and to establish their own independent and sovereign State. The construction of the wall raises a real question concerning Israel's sincerity in pursuing a genuine peace process in a serious and responsible fashion. The bantustanization of the occupied Palestinian territories entails further physical alterations which complicate even more any possible future negotiations on permanent status, and negates the possibility of establishing a contiguous Palestinian State throughout its entire territory.

The international community must be cognizant of those violations and their consequences, for the present and the future. The use of force cannot lead to the solution the world anxiously awaits, of a conflict that should have been resolved many years ago.

Mr. Cunningham (United States of America): This emergency special session which has been ongoing since 1997 does not contribute to the shared goal of implementing the road map. The path to peace is the Quartet performance-based road map to a permanent two-State solution to the Israeli-Palestinian conflict. The road map, endorsed in Security Council resolution 1515 (2003), very clearly outlines the obligations and responsibilities of the parties to achieve President Bush's vision of two-States, Palestine and Israel, living side by side in peace and security.

The international community has long recognized that resolution of the conflict must be through negotiated settlement, as called for in Security Council resolutions 242 (1967) and 338 (1973). That was spelled out clearly to the parties in the terms of reference of the Madrid Peace Conference in 1991. Involving the International Court of Justice in this conflict is inconsistent with that approach and could actually delay a two-State solution and negatively impact road map implementation. Furthermore, referral of this issue to the International Court of Justice risks politicizing the Court. It will not advance the Court's ability to contribute to global security, nor will it advance the prospects of peace.

The United States policy on Israeli construction of the fence is clear and consistent. We oppose activities by either party that prejudge final status negotiations. President Bush said on 19 November 2003, "Israel should freeze settlement construction, dismantle unauthorized outposts and the daily humiliation of the Palestinian people and not prejudice final negotiations with the placements of walls and fences".

But this meeting today and this draft resolution undermine rather than encourage direct negotiations between the parties to resolve their differences. This is the wrong way and the wrong time to proceed on this issue. Furthermore, the draft resolution itself is one-sided and completely unbalanced. The text itself is clearly not designed to promote a process towards peace. It doesn't even mention the word "terrorism". We will vote against this ill-advised resolution and urge Assembly members not to support it.

The President: We have heard the last speaker in the debate on this item. We shall now proceed to consider draft resolution A/ES-10/L.16 and draft decision A/ES-10/L.17.

Before giving the floor to the speaker in explanation of vote before the vote, may I remind delegations that explanations of vote are limited to 10 minutes and should be made by delegations from their seats.

Mr. Pamir (Turkey): We will vote in favour of the draft resolution before us. As this draft resolution, if adopted, will carry the issue to another forum, the legal one, I would like to explain our views on the matter. We agree with much of the contents of the statement made by the presidency of the European Union. However, we believe that the political process and the process of obtaining a legal opinion are not mutually exclusive.

We think that the wall, or security fence or barrier — whatever one may wish to call it — might commit a fundamental wrong against the Palestinian and Israeli peoples alike. It is a blunt tool that punishes both the Israeli and the Palestinian peoples — including women, children and the elderly — by condemning them to live behind gates. As such, we feel that it might play into the hands of the terrorists, who aim to polarize both societies and block any progress towards a just and lasting peace.

We believe that another reason why the wall is wrong is the fact that it is being built on other people's land. We feel that, as that man-made obstacle is constructed, Palestinian society will be pushed towards further desperation and the radical elements within that

society will gain the upper hand. That is clearly not what Israel would want to achieve. It is our strong belief, therefore, that it is our joint duty to speak out and tell our Israeli friends that that is not in the interests of anyone, including themselves.

Before concluding, I would like to say a few words about the threat of terrorism that Israel is facing. A series of heinous acts of terror may have pushed Israel to build the wall. While we are trying to convince Israel that that measure is excessive and must be terminated, we must at the same time do our utmost to convince the Palestinian leadership to prevent terrorist attacks against innocent Israelis and dismantle the terrorist infrastructure. The international community will stand behind the Palestinian leadership in that line of action. We call upon both sides to act with reason. Excessive security measures and terrorism create a vicious circle in the region, and the main victims are innocent civilians on both sides. Our hearts go out to the families of all the victims. They expect the two sides to break the cycle they are trapped in and to put their energy into finding a peaceful solution to the problems they are facing. They should cast aside the distorted maps they are using today and return to using the road map, which has the backing of the whole international community.

The President: We have heard the only speaker in explanation of vote before the voting.

The Assembly will now take a decision on draft resolution A/ES-10/L.16 and then on draft decision A/ES-10/L.17.

Draft resolution A/ES-10/L.16 is entitled, "Illegal Israeli actions in occupied East Jerusalem and the rest of the Occupied Palestinian Territory".

A recorded vote has been requested.

A recorded vote was taken.

In favour:

Algeria, Antigua and Barbuda, Argentina, Armenia, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belize, Benin, Bhutan, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Cambodia, Cape Verde, Central African Republic, Chad, China, Comoros, Côte d'Ivoire, Cuba, Democratic People's Republic of Korea, Djibouti, Egypt, Gambia, Ghana, Grenada, Guinea, Guinea-Bissau, Guyana, Haiti, India, Indonesia, Iran (Islamic Republic of), Jamaica, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Lesotho, Libyan Arab Jamahiriya, Malaysia, Maldives, Mali, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nepal, Niger, Nigeria, Oman, Pakistan, Panama, Qatar, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Senegal, Sierra Leone, Somalia, South Africa, Sri Lanka, Sudan, Suriname, Swaziland, Syrian Arab Republic, Timor-Leste, Togo, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, United Arab Emirates, United Republic of Tanzania, Viet Nam, Yemen, Zambia, Zimbabwe

Against:

Australia, Ethiopia, Israel, Marshall Islands, Micronesia (Federated States of), Nauru, Palau, United States of America

Abstaining:

Albania, Andorra, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Bulgaria, Burundi, Cameroon, Canada, Chile, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, Estonia, Fiji, Finland, France, Georgia, Germany, Greece, Guatemala, Honduras, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Nicaragua, Norway, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Samoa, San Marino, Serbia and Montenegro, Singapore, Slovakia, Slovenia, Solomon Islands, Spain, Sweden, Switzerland, Tajikistan, Thailand, the former Yugoslav Republic of Macedonia, Tonga, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay, Uzbekistan, Vanuatu, Venezuela

Draft resolution A/ES-10/L.16 was adopted by 90 votes to 8, with 74 abstentions (resolution ES-10/14).

The President: Draft decision A/ES-10/L.17 is entitled "Illegal Israeli actions in occupied East Jerusalem and the rest of the Occupied Palestinian Territory".

Before proceeding to take action on the draft decision, I should like to announce that, since the

publication of the draft decision, the Libyan Arab Jamahiriya has become a sponsor of A/ES-10/L.17.

A recorded vote has been requested.

A recorded vote was taken.

In favour:

Afghanistan, Algeria, Antigua and Barbuda, Argentina, Armenia, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Cambodia, Cape Verde, Central African Republic, Chad, Chile, China, Comoros, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Democratic People's Republic of Korea, Djibouti, Ecuador, Egypt, Ethiopia, Gabon, Gambia, Ghana, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, India, Indonesia, Iran (Islamic Republic of), Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Lesotho, Libyan Arab Jamahiriya, Malaysia, Maldives, Mali, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nepal, Niger, Nigeria, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Qatar, Russian Federation, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, South Africa, Sri Lanka, Sudan, Suriname, Swaziland, Syrian Arab Republic, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, United Arab Emirates, United Republic of Tanzania, Uruguay, Uzbekistan, Venezuela, Viet Nam, Yemen, Zambia, Zimbabwe

Against:

Australia, Israel, Marshall Islands, Micronesia (Federated States of), Nauru, Palau, United States of America

Abstaining:

Albania, Andorra, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Burundi, Canada, Colombia, Croatia, Czech Republic, Denmark, Dominican Republic, Estonia, Fiji, Finland, France, Georgia, Germany, Greece, Honduras, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Nicaragua, Norway, Papua New Guinea, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Samoa, San Marino, Serbia and Montenegro, Slovakia, Slovenia, Solomon Islands, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Tonga, Ukraine, United Kingdom of Great Britain and Northern Ireland, Vanuatu

The draft decision was adopted by 111 votes to 7, with 55 abstentions.

The President: Before giving the floor to speakers in explanation of vote on the resolution and decision just adopted, may I remind delegations that explanations of vote are limited to 10 minutes and should be made by delegations from their seats.

Sir Emyr Jones Parry (United Kingdom): The United Kingdom remains concerned about the route marked out for the barrier in the occupied West Bank. We regret that Israel has not complied with the General Assembly's demand, in resolution ES-10/13, that it stop and reverse construction of the barrier inside the occupied Palestinian territories. Nevertheless, the United Kingdom abstained on the vote on the draft resolution calling for an advisory opinion of the International Court of Justice on the legal consequences of the wall. We consider it inappropriate, without the consent of both parties, to ask the Court to give an advisory opinion. Moreover, it is unlikely to resolve the problem on the ground. This is not a case in which the General Assembly genuinely needs legal advice in order to carry out its functions. It has already declared the wall to be illegal. The United Kingdom voted in favour of that resolution. The question of the wall can be settled only through direct negotiations between the two parties and through positive action on the ground in the framework of a comprehensive settlement. To pursue an advisory opinion will in no way help the parties to re-launch the much-needed political dialogue necessary to implement the road map — and implementing the road map should be the priority.

Mr. Mavroyiannis (Cyprus): I have taken the floor in order to explain my Government's position on the draft resolution just adopted by the General Assembly. As a long-standing and strong advocate of strict compliance with international law in dealing with and resolving international disputes, we believe that all options and means provided for in the United Nations Charter, including, in particular, judicial remedies and advisory opinions of judicial bodies, should be available in situations where we are faced with illegal faits accomplis.

As an acceding country to the European Union, Cyprus has decided, however, to join in the common position of the Union and abstain in the vote. We did so in order to preserve the cohesion of the European Union and the necessary strength of its role as a member of the Quartet in the current efforts to push forward the negotiation process and advance in the direction of full implementation of the road map.

Cyprus, due to its own painful experience, has a special sensitivity towards artificial dividing lines and walls, which do not promote the necessary goodwill and understanding among peoples destined by geography to coexist. In this regard, we fully subscribe to the substance of the statement made by Italy, on behalf of the European Union. The position of Cyprus coincides with the concerns expressed by the Secretary-General in his report, particularly his assessment that the construction of this illegal barrier causes additional hardship to the Palestinian people and violates their rights.

Mr. Matsuura (Japan): Japan abstained from the vote on draft resolution A/ES-10/L.16. However, as we have expressed repeatedly, Japan is opposed to the construction of the wall that extends inside the Green Line because it not only negatively impacts on the lives of the Palestinians but also prejudges the final status of the negotiations. Once again, Japan urges the Israeli Government to terminate the construction.

Mr. Laurin (Canada): With regard to draft resolution A/ES-10/L.16, Canada abstained. While Canada agrees that there could be legal questions regarding the construction of this extensive barrier within the occupied Palestinian territories, on which the International Court of Justice could usefully provide guidance, we nevertheless question whether this request for an advisory opinion is a useful step at this time, in this highly charged environment.

In addition, the General Assembly has already expressed its opposition to the construction of this barrier and has called for construction to cease and for the sections of its route in deviation from the armistice line of 1949 to be reversed. This conflict needs to be resolved through negotiation. A unilateral re-partition of land through the establishment of this barrier will not lead to lasting peace.

Mr. Helg (Switzerland) (*spoke in French*): Switzerland is firmly opposed to the construction of the separation wall undertaken by Israel. The wall, which is illegal under international law and contrary to the road map, is a clear obstacle to the peace process and the realization of the vision of two States. Switzerland has already expressed on 21 October its position in its vote in support of the draft resolution contained in document A/ES-10/L.13, which calls for Israel to halt construction of the wall in the occupied Palestinian territories. It reiterated its position when it made its statement on the situation in the Middle East on 2 December in the plenary meeting of the General Assembly.

Despite our commitment to international law, Switzerland abstained in the vote on the draft resolution seeking to submit the question of the consequences of the wall to the International Criminal Court. We do not judge it to be appropriate in the current circumstances to bring before a legal body a subject in which highly political implications predominate.

Mr. Tan (Singapore): Singapore consistently votes in favour of the Palestinian position in the General Assembly. During the Assembly's fifty-seventh session, we voted in support of all 17 resolutions on this issue. And thus far, we have also voted in favour of the Palestinian position on all relevant resolutions at the fifty-eighth session of the General Assembly and at the recent meetings of the emergency special session, including on resolution ES-10/13 concerning the wall.

We do not support the actions of Israel in building the wall. However, we have reservations about seeking an International Court of Justice (ICJ) advisory opinion on the Israeli wall, as there are wider implications that cause us concern. As a small State, we rely on the integrity of international law, of which the ICJ is one of the most important pillars. We do not consider it appropriate to involve the ICJ in this dispute in this way. The underlying dispute is one concerning territorial boundaries. This should be settled by negotiation among the parties concerned or by the binding decision of an appropriate international tribunal such as the ICJ. An advisory opinion would have no binding effect on the parties to this dispute or on the General Assembly.

The purpose of seeking the advisory opinion of the ICJ must be to assist or facilitate the work of the General Assembly. In operative paragraph 1 of resolution ES-10/13, the General Assembly has itself already made the determination that the construction of

the wall by Israel is "in departure of the Armistice Line of 1949 and is in contradiction to relevant provisions of international law".

That assessment must necessarily have been made based on consideration of the obligations incumbent on Israel. The ICJ's advisory opinion does not formally bind either party since it is made pursuant to the advisory jurisdiction of the Court. Nor does it enable the General Assembly to take any action more binding than what it has already done in resolution ES-10/13. On the contrary, posing the question might create the impression that the General Assembly is not very sure about the correctness of its early determination on the legality of its Israel's actions in resolution ES-10/13. For the above reasons, we have abstained from the vote on this draft resolution.

The President: We have heard the last speaker in explanation of vote after the vote. One representative has requested to exercise the right of reply. May I remind Members that statements in the exercise of the right of reply are limited to 10 minutes for the first intervention and to 5 minutes for the second intervention and should be made by delegations from their seats.

Mr. Mekdad (Syrian Arab Republic) (*spoke in Arabic*): The statement by the Israeli delegation contained many false claims about my country. Those claims represent a desperate attempt to justify Israeli terrorist policies, but we shall desist from being drawn in by such a blatant attempt to waste the General Assembly's time with rhetoric that will smother the issue at hand. The international community has already sided with this just cause, as we have seen in the just concluded vote. The Israeli statement is yet another element in the overall misinformation campaign by the Government of Israeli to try to make the just cause of the Palestinians appear to be unjust. It is an attempt to divert international public opinion from the main problem in the Middle East: the continued Israeli occupation of Palestinian, Syrian and Lebanese territories and Israeli practices, such as building settlements and an expansionist wall, killing Palestinian children and destroying the homes and properties of the Palestinian people by means of a concerted and consistent policy.

The Israeli representative's attack against the General Assembly and the United Nations in general and his description of them in the worst terms is yet another reflection of the Government of Israel's position against this Organization and its resolutions, which represent the conscience and aspirations of all peace-loving peoples in the world to establish peace in the Middle East. The Israeli representative should, instead, listen to the voice of wisdom as represented in the statements of many members of the international community this morning, when we voted on a draft resolution.

This resolution makes it abundantly clear that a settlement of the situation in the region can only be based on international legitimacy and on putting an end to occupation, not on expanding settlements and building separation walls, which further worsen the living conditions of the Palestinian people. This takes place against a background in which the international community has declared that the only objective in the region is to establish a just, lasting and comprehensive peace. Will that representative and his Government heed these calls?

In conclusion, I would like to reiterate that a just and lasting peace in the Middle East can only be achieved through Israel's commitment to implement Security Council resolutions 242 (1967) and 338 (1973), based on the principle of land for peace and a total respect for the Madrid framework. This choice has already been made by Arab States through the Arab initiative they launched at the Beirut summit.

The President: Another representative has requested to exercise the right of reply. May I remind Members that statements in the exercise of the right of reply are limited to ten minutes for the first intervention and to five minutes for the second intervention and should be made by delegations from their seats.

I call on the representative of Israel.

Mr. Gillerman (Israel): Two very symbolic things happened in the last few minutes. First was what we all welcomed with a great sigh of relief, the fact that Libya, that great bastion of democracy and human rights, has chosen to be a sponsor of this resolution. And the second was that the only right of reply from this Hall was given by a country that is one of the world's foremost perpetrators, harbourers, financers and initiators of terror: Syria. For Syria to ask us — or anyone in this Hall — to listen to words of wisdom is an oxymoron in itself.

However, I wish to thank this General Assembly for a very significant act, which took place here today. If you look at the vote, you will all see that more than half of the Member States of the United Nations did not vote for this biased resolution. More than half have, in one way or another, rejected it. And if we look at the countries that voted for it and the countries that abstained or voted against it, we see a very clear division between, on the one hand, among those 90, mostly tyrannical dictatorships, corrupt and human rights-defying regimes and, on the other side, most of the world's enlightened democracies, who chose to not support this resolution. Israel today regards this vote as a moral victory, and so should this Hall. This is a moral victory for the enlightened, civilized, democratic world over the dark forces of tyranny and corruption.

The President: I now give the floor to the representative of the Syrian Arab Republic for his second intervention, which should not exceed five minutes.

Mr. Mekdad (Syrian Arab Republic) (*spoke in Arabic*): Once again, I would like to reiterate to you our sincere concern for this General Assembly's time, during which we listened to the representative of the Israeli occupation defend Israel's occupation of the Palestinian territories and its construction of the expansionist, racist wall. We listened also to the fact that his Government has killed more than 3,000 Palestinians in more than two years, including approximately 500 children. That occupation and those massacres committed by Israel against innocent civilians is terror personified, it is nothing else. This is terror, this is expansionism and aggression.

By describing his country's occupation of our land and by accusing us of things that everyone knows are false, the Israeli representative is defending his country's policies that have been condemned by more than 600 General Assembly resolutions and have been condemned by the Security Council over the past years with more than 40 resolutions. I challenge him to mention just one resolution adopted by the United Nations against my country or the other countries that he mentioned. These are lies and misleading statements and the representative of Israel should be ashamed of such lies and false statements. The General Assembly resolution that we just adopted is another reaffirmation of the fact that what we have heard from the representative of Israel is nothing but lies. We have also heard the views of the countries that have abstained from voting, and they too have stressed that they stand against the Israeli Government's actions and policies and against the construction of the separation wall. Who is now telling the truth?

When we say it is Israel that rejects just and lasting peace, we refer to Israeli policies. Once again, we are advocates of peace and it is Israel that is doing its utmost to bury the dream of peace in the Middle East. In order to avoid further killing and bloodshed, the military Government in Israel and its representative should refrain from using such low means of trying to mislead world public opinion that has exposed their false and insidious policies.

The President: The representative of Israel has requested the floor in right of reply for the second time, which should not exceed five minutes.

Mr. Gillerman (Israel): This Assembly has listened once again to the voice of one of the most tyrannical, corrupt, backward and terrorizing regimes in the world. Syria is not only on the wrong side of the vote today. Syria has been on the wrong side of the fight against terrorism, by being one of the world's main perpetrators, harbourers, initiators and financers of terrorism. Only a few days ago, as I mentioned in my statement earlier, explicit orders from Damascus sent two suicide bombers to blow themselves up in a school in Yokne'am, near Haifa, the result of which could have been devastating and would have killed scores of children and youngsters, only because they are Israeli and only because they are Jewish.

Syria has long lost, and in fact never had, the right to speak on behalf of reason, on behalf of right and on behalf of good. Syria stands for everything that is dark and evil in our world. Therefore, the fact that Syria finds itself, with so many other countries of its kind, on one side of this vote, and Israel finds itself, with most of the world's great democracies, on the other, is the greatest testament to the fact that the Arafat wall exists to protect, while the other countries exist to destroy.

Mr. Al-Kidwa (Palestine) (*spoke in Arabic*): We would simply like to extend our sincere thanks and appreciation to all the countries that have supported the resolution that we have just adopted and which we believe to be of historic importance.

Regrettably, the Israeli representative cannot refrain from making disgusting remarks, and in order to maintain decorum we will only describe them as unbecoming and inappropriate for this venue.

The entire world stands against the expansionist annexation wall that the Israelis are building on our land. The entire world. It seems, however, that the Israeli representative feels that is none of his concern.

And, may I ask, if this wall is the Arafat wall, what, then, is the Sharon wall? For it is Sharon who has not had any secret of his wish to annex land by force. It is Sharon who had 13 reservations on the road map, virtually nullifying it. It is Sharon who rejected Security Council resolution 1515 (2003), which was unanimously adopted. And it is Sharon who daily threatens to take unilateral measures, by which he means annexing large areas of the Palestinian territories. We shall not delve here into Sharon's shining record in the area of human rights and war crimes. Without going into further details and out of respect for your time, Mr. President, we would only like to repeat that this wall is a mark of disgrace of the twenty-first century and should be immediately removed.

We did not quite understand the position of the delegation that stated that the issue of the wall could only be resolved through negotiations. That is a truly lamentable position. The problem is not a problem of borders, it is a problem of the annexation and acquisition of territories by force, contrary to international law.

We wish to express our sincere thanks and appreciation to all those that have supported resolution ES-10/14. In our opinion, those 90 votes cast in favour of the resolution are very valuable indeed. The 90 votes were in favour of international law and of what is right. Moreover, those votes were cast in spite of the immense pressures and, to be frank, even threats, to which the Member States were subjected.

We would also like to point out that the resolution was adopted without political objections, with the exception of Israel and the United States and their allies. We cannot but disregard the Israeli representative's statements, which are truly laughable. The problem with them, as we mentioned in our statement, is that they demonstrate the total inability of the occupiers and colonialists to see the facts as they are.

We put our trust in the highest legal authority in the United Nations system. Those who do not trust that body are the colonialist occupiers. We believe that an advisory opinion by the International Court of Justice would contribute significantly to the realization of our common objective: putting an end to acts that violate international law as a prelude to establishing peace in the region.

Mr. Gillerman (Israel): Unfortunately, the Palestinian Observer has used his time to mislead us once again, but he has also shed some light on what may be one of the greatest problems of the Palestinian Authority and its representative. He repeatedly said that the Palestinian Authority does not understand what other countries meant when they said that the conflict should be resolved by negotiation. That is true. The Palestinians fail to understand that conflicts must be resolved through negotiation and cannot be resolved by terror.

The Arafat wall is being built to prevent the most evil and brutal terror of our century, a campaign that is being waged by a people led by a corrupt leader down a path of destruction, poverty and bloodshed — with no other success except that which can be found in his own bank accounts.

Furthermore, it reminds me that the Palestinians did say in the Third Committee, when Israel presented the draft resolution on the Israeli child, that they were not "amused" by that draft resolution. I wish to remind the Palestinian Observer that it is no delegation's duty to gratify the whims of the Palestinian delegation or to entertain them — especially as we know that the only thing that really entertains Palestinians and gives them enjoyment is when Israelis are killed, when children are butchered and when Americans are killed. When the Twin Towers collapsed — that was when there was dancing on the roofs of Ramallah, in Nablus and other places. If that is the kind of amusement the Palestinians seek, I do not believe that either Israel or any other country can give them satisfaction.

The President: Another representative has requested to exercise the right of reply. May I remind members again that statements in the exercise of the right of reply will be limited to ten minutes for the first intervention and five minutes for the second intervention, and should be made by delegations from their seats.

Mr. Own (Libyan Arab Jamahiriya) (*spoke in Arabic*): My delegation does not wish to dignify the statement made by the Israeli representative about my country. It is no secret to anyone that that Zionist regime commits the worst violations of human rights and the rights of the Palestinian people, women, children and the elderly. Its tanks and bulldozers trample humans, even peace activists, and homes alike, and they say it is all for peace. We should not be

listening to his advice, and I believe he should direct his advice to himself instead.

The President: The Observer of Palestine has requested the floor for a second intervention in right of reply. May I remind members that the second intervention should not exceed five minutes.

Mr. Al-Kidwa (Palestine): With regard to the substance of the matter before us, I shall refrain from characterizing the most recent statement made by the Israeli representative. We believe that representatives have indeed been able to reach very clear conclusions about that statement and previous statements as well.

I would make only one point of clarification, because it seems that the Israeli representative is unable to understand something said only once. The Observer of Palestine did not say that the conflict should not be solved through negotiations. The Observer of Palestine said that he regrets the fact that one delegation said that the issue of the wall could not be solved except through negotiations. The difference is huge. We indeed are committed to the road map, to peaceful negotiations, and to all attempts aimed at reaching a final settlement; however, building that wall can only destroy the potential for any such settlement. That cannot be, should not be, and shall not be subject to negotiations.

The President: Another representative has requested to exercise the right of reply, which should be for ten minutes in the first instance, and five minutes in the second.

Mr. Niang (Senegal) (*spoke in French*): The hour is quite late and so I will be very brief. Just now the representative of Israel, in commenting on the vote on draft resolution L.16, categorized the various votes — those who voted in favour and those voted against or abstained — and he made comments that I consider unfortunate when he described all the countries that voted in favour of the draft resolution as either anti-democratic countries or violators of human rights. I wish to make it plain that Senegal is a democratic country that respects human rights. I am convinced that many of the countries that voted in favour of the draft resolution share the same ideals and convictions as Senegal, so I object to that characterization. I am outraged by such a rude, simplistic and very unpleasant comment.

The President: The tenth emergency special session of the General Assembly is now adjourned, in accordance with the terms of the draft decision that is contained in document A/ES-10/L.17 and was just adopted.

The meeting rose at 1.10 p.m.